IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
1. S.B. Criminal Jail Appeal No.87/2001

Satyanarain Soni
Versus
Government through C.B.I. New Delhi

AND
2. S.B. Criminal Appeal No.682/2002

Government through C.B.I. New Delhi
Versus
Usman S/o Qadir

Date of Judgment :::: 15th May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Presence in Appeal No.87/2001

Ms. Rajesh Kandwal and
Ms. Anupama Parashar, Amicus Curiae, for accused-appellant Satyanarain Soni
Shri S.P. Tyagi, for respondent CBI

Presence in Appeal No.682/2002

Shri S.P. Tyagi, for appellant CBI
Shri Praveen Balwada and
Shri Suresh Dhanwal and
Shri O.P. Jhajhria and
Shri Rohitash Choudhary, Counsel for accused -respondent Usman

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By the Court:-

These two appeals are directed against common judgment and order dated 22.1.2001 passed by learned Special Judge, N.D.P.S. Act Cases (Additional Sessions Judge, No.2) Kota, in Special Sessions Case No.248/94, therefore, both the appeals were taken-up together and are being disposed of by this common judgment.

The learned trial court, vide its impugned judgment, convicted appellant Satyanarain Soni under Section 8/18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short, 'the Act, 1985') to undergo 10 years rigorous imprisonment and a fine of Rs.1,00,000/- (Rupees one lac); in default of payment of fine, to further undergo six months additional rigorous imprisonment; and acquitted accused Usman Khan from the charge under Section 8/21 of the Act, 1985. Being aggrieved with the same, accused Satyanarain filed S.B. Criminal Jail Appeal No.87/2001 challenging his order of conviction and the C.B.I. preferred S.B. Criminal Appeal No.682/2002 challenging the order of acquittal of accused Usman.

The prosecution case, in brief, is that Ram Murti, Inspector, C.B.I., received an information that accused Usman, with his colleague-Satyanarain, is involved in clandestine business of contrabands. On the basis of this information, Ram Murti, Inspector, along with Lakkhi Prasad, Dy. Superintendent of Police, constituted a team consisting of P.C. Sharma, A.S.I., V.S. Soman, Inspector, Head Constable Bhupendra Singh, Constable Dalpat Singh and Yadram, and came at Kota on 1.5.1991. Constable Fauj Singh also met them there. They appointed the informer again after arriving at Kota with a direction to inform them about activities of accused Usman and Satyanarain. On

5th May, 1991, the informer gave a secret information to Inspector Ram Murti that on 6.5.1991 Usman and Satyanarain will come with opium and heroin in front of Hotel Navrang, Kota, on Yazdi motorcycle without registration number. The said information was reduced in writing and forwarded to Superintendent of Police, C.B.I., New Delhi, who happened to be at Kota itself on 5.5.1991. On 6.5.1991 they reached at the destination along-with two independent witnesses – P.C. Jain and G.S. Bairwa.and, as per the information of the informer, at about 12.30 PM two persons came on Yazdi motorcycle, which was bearing no number of its registration. Soon after receiving signal from the informer, they caught hold both the persons with motorcycle. They gave their introduction to those persons. On enquiry by Inspector Ram Murti, one person disclosed his name as Usman Khan and another person, who was pillion rider, stated his name as Satyanarain. They were asked about heroin and opium; thereupon accused Usman admitted that he was having 200 gram heroin and Satyanarain is having 16 kilogram opium in two bags lying in trunk in his possession. The Inspector Ram Murti apprised them of their right about their search either before Magistrate or before Lakkhi Prasad, Dy. S.P., C.B.I., who happened to be a Gazetted Officer. Accused persons gave their consent to get themselves searched in presence of Lakkhi

Prasad, a Gazetted Officer. Usman gave a polythene bag from his pant, which was found to be heroin. The steel box was also opened and two Rexine bags containing opium were found therein. One bag was weighing 8 kilogram 400 gram and another bag was weighing 7 kilogram and 400 gram. Two samples of 10 gram each were taken from both the bags of opium. Two samples of 5 gram each were taken from heroin bag. All the samples were sealed with the seal of Inspector Ram Murti and marked as R.M.S. The seal was sealed and it was handed over to independent witness Shri P.C. Jain, Junior Telecoms Officer, and receipt thereof was taken.

After completion of investigation, a charge-sheet was filed against both the accused. The trial court, vide its order dated 27.6.1996, framed charge against accused Usman under Section 8/21 and against accused Satyanarain under Section 8/18 of the Act, 1985. Both the accused denied the charge and claimed trial.

The trial court, vide the impugned judgment, convicted and sentenced accused Satyanarain, as mentioned above, and acquitted accused Usman from the charge framed against him.

Ms. Rajesh Kandwal and Ms. Anupama Parashar, Amicus Curiae, appearing on behalf of accused-

appellant Satyanarain, contended that a notice under Section 50 of the Act, 1985, was necessary to be given in writing to the accused, but the same was not given, therefore, the entire trial vitiates; the recover officer PW-8 Lakkhi Prasad was an interested person as he was member of raiding-party, therefore, recovery of contraband made by him or in his presence, was illegal, therefore, it was contended that trial court committed an illegality in convicting the accused Satyanarain and the impugned judgment is liable to be set-aside by this Court.

Shri Praveen Balwada, the learned counsel for accused Usman contended that the trial court has rightly acquitted accused Usman from the charge framed against him and there are no compelling reasons so as to interfere in the order of acquittal passed by the trial court against accused Usman and the appeal filed by the C.B.I. is liable to be dismissed.

The learned counsel for the C.B.I. contended that the opium weighing 15 kilogram 800 gram was recovered from two bags lying in the trunk, which was in possession of accused Satyanarain, therefore, provisions of Section 50 of the Act, 1985, were not attracted. So far as investigation made by Inspector Ram Murti is concerned, it is contended that there is nothing wrong in it as he was fully competent to

investigate the matter and his statement is corroborated with statement of independent witness as well as other members of raiding-party. The recovery of contraband was made in presence of Gazetted Officer PW-8 Lakkhi Prasad, Deputy Superintendent of Police, as per consent of accused-persons, there is nothing wrong in case recovery of contraband was made in presence of Lakkhi Prasad. It is next contended that even if PW-8 was accompanied with raiding-party then it is for the accused to show as to what prejudice has been caused to him. If any prejudice has been caused to the accused then the same is required to be proved and it cannot be inferred. He also referred Section 54 of the Act, 1985 and contended that there was presumption in favour of the prosecution that accused has committed an offence and burden shifted on the accused to prove that he was innocent or to rebut such presumption.

So far as accused Usman is concerned, although he argued that the judgment of the trial court is liable to be set-aside, but he could not satisfy the court about compliance of Section 50 of the Act, 1985, in his case, particularly when the contraband was recovered from his pant which falls within 'personal search' of an accused and the provisions of Section 50 were fully attracted and applicable and the same were not complied with, as discussed in detail by the trial

court in the impugned judgment.

I have considered the submissions of the learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court.

The recovery of opium weighing 15 kilogram 800 gram from two Rexine bags lying in trunk, which was in possession of accused Satyanarain, is fully proved in the present case from the statements of PW-10 Ram Murti, PW-8 Lakkhi Prasad and other members of the raiding-party, who have supported the prosecution case and corroborated the statements of PW-10 Ram Murti and PW-8 Lakkhi Prasad. The trial court has examined the prosecution evidence, in detail.

The main important witness in the present case is Ram Murti (PW-10); he received the information from the informer in the matter, which, as per his statement, was reduced in writing and the information in this regard was forwarded to his immediate superior officer also; there were two independent witnesses, namely, PW-7 P.C. Jain and G.C. Bairwa; the recovery of opium was made from two Rexine bags lying in trunk, which was in possession of accused Satyanarain, therefore, this is not a case of personal search of Satyanarain and the provisions of Section 50 of the Act, 1985 were not attracted.

The trial court has considered the legal as well as factual position, both, in detail, and I am satisfied with reasons assigned by the trial court that Section 50 is not attracted in the case of accused Satyanarain and no interference is called for in the finding of the trial court in this regard. The samples of contraband were taken and sent for examination to Laboratory and positive test was given in the report. The samples were sealed by the seal which was further sealed and was handed over to independent person. The seal of the sample was found intact by the Laboratory, which is clear from the F.S.L. Report. The accused could not point out any prejudice he suffered from the fact that recovery of contraband was made in presence of PW-8 Lakkhi Prasad, Dy. S.P., who happened to be a Gazetted Officer, and was a member of raiding-party. The In-charge of Team was PW-10 Ram Murti. PW-7 P.C. Jain and PW-9 V.L. Soman have proved the prosecution case and corroborated the testimony of PW-10 Ram Murti and PW-8 Lakkhi Prasad.

So far as accused Usman is concerned, the trial court has dealt with his case in Para Nos. 64 to 70 of the impugned judgment and, after considering the facts as well as the legal position, recorded a finding that prosecution has failed to prove the case against him beyond all reasonable doubts and consequently

acquitted him from the charge under Section 8/21 of the Act, 1985.

The statements of PW-8 Lakkhi Prasad, PW-10 Ram Murti and recovery-memo (Exhibit P-9) reveal that accused Usman was given option only to get himself searched either before Magistrate or before Lakkhi Prasad, who happened to be a Gazetted Officer and was present at the spot, and no option was given to accused to get himself searched before any independent Gazetted Officer as required under Section 50 of the Act, 1985. The contraband was alleged to have been recovered from the pant of the accused, therefore, it was falling within the meaning of 'personal search' of accused and compliance of Section 50 was necessary. The provisions of Section 50 of the Act, 1985, are mandatory in nature and non-compliance thereof vitiates the entire proceedings.

The learned counsel for the C.B.I. could not point out any error or illegality in the finding of the the trial court relating to acquittal of accused Usman so as to interfere in the order of his acquittal.

The Hon'ble supreme Court in **State of Madhya Pradesh v. Bacchudas @ Balaram & Others (2007 AIR SCW 1305)**, while considering the scope of Section 378, Cr.P.C., held that even if two views are possible on

the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted and the judgment of acquittal should be interfered with only when there are compelling and substantial reasons for doing so. The Hon'ble Supreme Court held as under:-

> "9. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden threat which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See Bhagwan Singh v. State of M.P. 2003 (3) SCC 21). The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. ....."

After considering the submissions of learned

counsel for the C.B.I. in the light of finding of the learned trial court, I do not find any illegality in the order of acquittal of accused Usman and no interference is called for in the same.

In view of the above discussion and reasons, I do not find any force in any of the contentions of the learned counsel for the appellants in both the appeals and both the appeals are accordingly dismissed.

A copy of this judgment be placed in the file of S.B. Criminal Appeal No.682/2002.

(Narendra Kumar Jain) J.

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